IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.107 OF 2007
IN
CRIMINAL WRIT PETITION NO.1476 OF 2006

Isub Ahmed Naik ..... Applicant.

V/s

Khairunnissa Isub Naik and anr. ..... Respondents.

Ms. Shakuntala A. Mudbidri for the applicant.

None for Respondent No.1.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 24th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant. None appears on behalf of Respondent No.1.

2. This is an application for setting aside the dismissal of the Petition on account of non-compliance of the conditional order passed by this Court dated 01/08/2006. By the said order, applicant - petitioner was directed to deposit an amount of Rs 5,000/- towards costs of litigation and he was also directed to pay arrears of maintenance within 8 weeks.

3. It is submitted by the learned Counsel appearing on

behalf of the applicant that, in fact, within two weeks from 01/08/2006 an amount of Rs 5,000/- was paid by the applicant towards costs of litigation. A copy of the receipt towards deposit of the said amount on 11/08/2006 is annexed to this application at Exhibit-2. It is submitted that, thereafter, within eight weeks, as directed by this Court, entire arrears of maintenance were deposited by the applicant in the trial court. The applicant has annexed at Exhibit-3 money order receipts towards the payment of arrears which were deposited by money orders on 19/08/2006, 26/08/2006 and 31/08/2006. It is submitted that however, inadvertently, this payment of arrears which was made by the applicant was not shown to the registry and, therefore, the Petition was shown to be dismissed for want of prosecution. It is submitted that, in fact, the applicant - petitioner had complied with the conditional order which was passed by this Court on 01/08/2006. It is submitted that, therefore, the Petition, in fact, ought not to have been dismissed for want of prosecution.

4. Having perused the application and averments made therein and the receipts which are annexed to the application, in my view, since the applicant has complied with the order passed by this Court, the matter cannot be said to be dismissed for want of prosecution. Petition is, therefore, restored to the file. Place the Writ Petition on admission board on 5th September, 2007.

5. Application is disposed of.

(V.M. KANADE, J.)